



# California Regional Water Quality Control Board

## Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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March 28, 2005

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### **RESPONSE TO COMMENTS ON 01/12/05 TENTATIVE WASTE DISCHARGE REQUIREMENTS (WDR) AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT RECEIVED ON MARCH 11, 2005 – CITY OF LOS ANGELES, TERMINAL ISLAND TREATMENT PLANT (NPDES PERMIT NO. CA0053856, CI-2171)**

Dear Ms. Robinson:

Thank you for your comments to the above-referenced WDR and NPDES permit. The following are the Los Angeles Regional Water Quality Control Board (Regional Board) responses to your comments provided on March 11, 2005:

#### **1. Comment: *Effluent Temperature Limit is Overly Restrictive and Not Appropriate for the Los Angeles Harbor***

*The Tentative Permit sets a new temperature effluent limit of 86° F, instead of the previous limit of 100° F. This new temperature limit is impractical and unnecessary since it is only applicable to estuaries per the Thermal Plan. This limit has also been applied to inland discharges where there is little or no dilution. However, TITP discharges into a deepwater harbor, and the ecological conditions of the harbor clearly differ from those of an estuary or inland surface water. Also, the dilution in the harbor, as well as the diffuser system of the outfall significantly decreases the temperature of the effluent once it reaches the receiving water. As TITP has been in operation prior to 1972, the only requirement of the Thermal Plan applicable to the TITP is that "elevated temperature waste discharges shall comply with necessary limitations to assure protection of beneficial uses."*

*A review of the historical receiving water temperature data indicates that the receiving water temperature has never exceeded or even approached 80° F at any of the harbor monitoring stations. Therefore, no reasonable potential exists for the receiving water to exceed 80° F and no effluent limit for temperature is required. See 40 C.F.R. §122.44(d)(1)(ii)(requiring an "instream" exceedance of the applicable objective for an effluent limit to be required). For this reason, the Bureau additionally requests removal of the 80° F receiving water temperature limitation from the Tentative Permit at page 40, Provision IV.5.E.*

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*applicable to estuaries per the Thermal Plan. This limit has also been applied to inland discharges where there is little or no dilution. However, TITP discharges into a deepwater harbor, and the ecological conditions of the harbor clearly differ from those of an estuary or inland surface water. Also, the dilution in the harbor, as well as the diffuser system of the outfall significantly decreases the temperature of the effluent once it reaches the receiving water. As TITP has been in operation prior to 1972, the only requirement of the Thermal Plan applicable to the TITP is that "elevated temperature waste discharges shall comply with necessary limitations to assure protection of beneficial uses."*

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Harbor Water Temperature (oC)=		18.87			
Harbor Water Temperature (oF)=		66.0			
	Scenario:	A	B	C	E
	Dilution:	86	66	61	82
	Water Temperatures (oF)				
	Raw Effluent	Edge of Acute Mixing Zone			
Average	78	66.1	66.1	66.2	66.1
Maximum	90	66.2	66.3	66.4	66.3
Minimum	76	66.1	66.1	66.1	66.1
1993 permit effluent limit	100	66.4	66.5	66.5	66.4

*Furthermore, the record for the Tentative Permit fails to include evidence that the current effluent temperatures will adversely impact beneficial uses. Based on the data provided above and the lack of evidence to the contrary, TITP's effluent temperature will not adversely impact the beneficial uses in the harbor, and an 86° F effluent limitation is unnecessary, and should be removed from the permit. Alternatively, the current permit limit of 100° F should be retained.*

*Notwithstanding the above comments, neither the Tentative Permit, nor the fact sheet explains the basis for lowering the effluent temperature limit at all in general, and to 86° F in particular.*

**The Bureau requests that:**

1. Effluent limit for temperature of 86°F be removed, or alternatively, that the Tentative Permit retain the current permit's effluent limit of 100°F.
2. The receiving water temperature of 80° F be removed.

**Response:** We agree with the Bureau's request, considering the dilution credit given.



**Modification:** The temperature of waste discharge requirement has been revised as "The temperature of wastes discharged shall not exceed 100°F." Section IV.5.E has been deleted.

**2. Comment: *The Dilution Credit Allowance is Overly Conservative and Not Reflective of Present or Likely Future Discharge Scenarios***

*The Tentative Permit suggests that the most conservative dilution credit of 61:1 was chosen for calculating final effluent limits for the purpose of protecting aquatic life, human health and receiving water quality, and for the consideration of simplicity. This most conservative route is not supported by evidence in the record, particularly since four other dilution scenarios have been deemed appropriate when differing flow regimes are present. Case A, stated on page 8 of the Tentative Permit, is the actual case that exists at TITP today, with Case B projected for the end of this five-year permit. The scenario actually chosen, Case C, will not occur until 2020. Yet Case C was chosen as the most appropriate, even though this is a dilution scenario not currently present and which will not occur at anytime within the five-year window of the permit. The Bureau requests that the Case A dilution factor of 86:1 to be used as most reflective of the actual current dilution.*

*The Bureau, in its May 2004 Dilution Study submitted to the Regional Board, also developed dilution factors based on a chronic mixing zone. The chronic mixing zone was based on the U.S. Army Corps of Engineers' Hydrodynamic Model for the Los Angeles Harbor. The Bureau requested that the Army Corps re-run their model to simulate TITP's discharge of effluent and brine (Case A) to the harbor. A dilution factor of 215:1 was determined appropriate for the chronic mixing zone based on this model. The Army Corps' model is a valid model of tidal flows within the harbor upon which to determine the available dilution for TITP's discharge. The Regional Board chose not to use the chronic results because a copy of the Army Corps' proprietary model was not available for the Regional Board to independently run and analyze model inputs. However, the Army Corps' model is a valid and published model and its results represent evidence in the record that should be considered, particularly where no contrary evidence exists to refute its determinations. For these reasons, a chronic dilution factor of 215:1 should be applied in TITP's permit.*

**The Bureau requests** that Case A, cited in Finding 22 be selected as the most appropriate scenario for TITP for the next 5 years, with an acute dilution factor of 86:1 and a chronic dilution factor of 215:1.

**Response:** The dilution ratios of Cases A and B are based on the tertiary flow of 17 mgd with the different factors. The current quantity of tertiary-treated effluent discharged into the Harbor fluctuates and ranges between 15 and 23 mgd. The dilution ratio study did not provide sufficient information to cover the current daily maximal flow. Therefore, for the protection of aquatic life, human health, and receiving water quality, the most conservative dilution credit of 61 was chosen for the acute and chronic situations, for calculating the final effluent limits.

Regional Board staff disagree with a chronic dilution credit of 215, based upon the use of the 0.4 contour, which actually extends beyond the monitored area (See attached Fig. 2, compared with the NPDES water quality sampling stations in Fig. 2-3 with Fig 3-2 of the Mixing Zone Study). The 0.4 contour line extends north and eastward beyond the current monitoring area. Additionally, Fig.3 provided by the State Board is used to estimate the three residence times of drifting organisms with different contour lines. There is no information available for the possible impacts of chemicals on these organisms during their stay within each contour. Therefore, the higher chronic dilution credits have not been granted.

**Modification:** We have found no compelling evidence to change the dilution ratios. If the City provides additional data, which support a different dilution ratio and shorter residence time, the permit can be reopened. There is no change warranted in response to the comment.

**3. Comment: A 5-Year Compliance Schedule Does Not Provide Sufficient Time to Achieve Consistent Compliance with New Permit Limits**

*The Bureau is appreciative of the 5-year compliance schedule included within the permit for metals and ammonia. However, five years does not provide adequate time for the Bureau to come into compliance with proposed effluent limits for metals. The calculated effluent limits for metals are the result of background concentrations exceeding water quality objectives in the harbor. Solely because of these background levels, the Regional Board is not allowing the application of a dilution credit. If it were not for these background concentrations, dilution credits would be applied according to the State Implementation Plan (SIP) and TITP would receive limits for which the plant could be in immediate compliance and a compliance schedule would be unnecessary.*

*As the Bureau has noted in its comments regarding the Regional Board's recently adopted Basin Plan Amendment to include compliance schedules, five years is not enough to design and construct new treatment facilities.<sup>1</sup> There is no quick fix for this problem because the background concentrations do not result from TITP's discharge into the harbor, but are likely the result of other activities within the harbor (e.g., dredging or port vessels) or from runoff. Further, many of these metals are naturally occurring or ubiquitous and, as such, they are not source controllable and may take many years to achieve low enough levels to attain the standards. By way of example, the mercury TMDL for the San Francisco Bay proposes a 120-year compliance period for full recovery to meet the standard for this metal. See Order No. R2-2004-0082.*

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<sup>1</sup> Congress has recognized that construction or upgrading of municipal treatment plants is a lengthy process. See H.R. Rep. No. 97-720, 97th Cong., 1st Sess., 1981 U.S.C.C.A.N. 2629 (Oct. 9, 1981) ("The completion times have been lengthy, even when funding was available, ranging from an average of 7 1/2 years for small projects to 11 1/2 years for very large projects.") (emphasis added).



*However, the Bureau notes that the SIP does provide the Regional Board some flexibility in setting compliance schedules under special circumstances. For instance, the Regional Board could provide a case specific exception to the 5-year requirement, or could provide a longer TMDL-based schedule because the waters appear to be impaired for these metals. The Bureau urges the Regional Board to utilize any flexibility it may have to assist the City in trying to comply with limits that are not feasibly achievable in the five-year compliance period. Another option would be to include Best Management Practices (BMPs), source control, pollution prevention requirements, or narrative effluent limitations in lieu of numeric limits. See accord 40 C.F.R. §122.44(k)(3); *Communities for a Better Environment v. State Water Resources Control Board* (2003) 109 Cal.App.4th 1089, 1104 [1 Cal.Rptr.3d 76], reh'g. den., 2003 Cal.App. LEXIS 1082 (1st. Dist. June 27, 2003), cert. den., 2003 Cal. LEXIS 7251 (Sept. 24, 2003).*

*Angeles with a goal of total reuse and elimination of its discharge by 2020. Based on this resolution, the City embarked on building the first phase of the AWTF at a substantial capital investment and is hoping to enlarge this facility in future years. Instead of being provided with a compliance schedule consistent with the goal of 2020 as stated in the Resolution to eliminate TITP's discharge, the Bureau is now facing a 5-year window to comply with new requirements. The Bureau relied on Resolution 94-009 in constructing the AWTF, and specifically, on the Regional Board's promise, acknowledgement, and approval of the fact that brine would be able to be discharged into the harbor. Under the Tentative Permit, if after 5 years no solution can be developed to meet the proposed limits, the discharge of brine would also be prohibited, which would be contrary to the letter and spirit of Resolution 94-009.*

*The Bureau requests that the Regional Board allow additional time for compliance if the City's future monitoring of the receiving water does not prove that background concentrations for metals are lower than water quality objectives using more sophisticated testing methods. During the 5-year compliance period provided in the permit, the Bureau proposes to undertake additional monitoring and to conduct Site-Specific Objective studies to determine whether dilution credits could be applied and/or local conditions could yield site-specific dissolved/total translators or water effect ratios (WERs) that might result in compliance.*

*If these steps prove inadequate in complying with proposed limits, then the Bureau would request the waters be listed for the problematic individual metals to allow additional time for TMDL-based compliance schedules under the SIP process. This would allow time for the development and adoption of wasteload and load allocations along with parallel planning studies, design, and construction of facilities, if needed, for the removal of metals from the effluent.*

**The Bureau requests** *to provide additional time for compliance with effluent limits for metals, or list the waters for problematic individual metals thereby allowing for a minimum of 15 years or more TMDL-based compliance schedule depending future alternatives to be developed.*





**Response:** We disagree. Both the California Toxics Rule and the SIP contain a provision authorizing a compliance schedule for point source dischargers to come into compliance with the CTR criteria. However, the CTR provision expires on May 18, 2005. The SIP provision expires 10 years from the effective date of the SIP (May 1, 2011). Section 2 of the SIP reads as follows: "The schedule of compliance for point source dischargers in an NPDES permit shall be as short as practicable but in no case exceed the following:

- A. Up to five years from the date of permit issuance, reissuance, or modification to complete actions (such as pollutant minimization or facility upgrades) necessary to comply with CTR criterion-based effluent limitations that are derived with or without a TMDL; and,
- B. Up to 15 years from the effective date of this Policy to develop and adopt a TMDL, and accompanying Waste Load Allocations (WLAs) and Load Allocations (LAs), as described in Section 2.1.1."

Since the Discharger has not made appropriate commitments to support or expedite the development of a TMDL, the TMDL-based compliance schedule does not apply in this situation. The first compliance schedule option (up to five-years from the date of permit reissuance) is more appropriate for the TITP discharge. However, in case the City is unable to comply with final effluent limits at the end of the 5-year compliance schedule, the City should request a TSO to avoid violations and penalties and to provide a compliance schedule.

**Modification:** There is no change warranted in response to the comment.

**4. Comment: *As an Alternative to Longer Compliance Schedules, the Regional Board Should Apply a Dilution Credit for Metals***

*The Regional Board states that TITP will not be given a dilution credit for metals because the background concentrations are higher than the water quality objectives. It should be noted that the harbor is not currently listed on the 303(d) List as being impaired for metals.*

*Background concentrations were determined based upon data from the City's Interim Monitoring Program. These data represents total metals as opposed to recoverable metals suggested by the SIP. For example, the Regional Board refers to the California Toxics Rule (CTR), which relies on a "Total Recoverable" method. The "Total Recoverable" method, is less rigorous than the "Total Metals" method used by the Bureau. Hence, the Bureau's occasional data point above the objective or limit may be due to the use of a more rigorous metal digestion (sample preparation) method. This could have also resulted in an overstatement of metal concentrations.*

*In addition, the Port of Los Angeles' Channel Deepening Project and its dredging and construction of the Submerged Storage Site adjacent to the TITP Outfall should be considered as a possible source of the currently high metals background concentrations in*

*the harbor. This ongoing construction may have caused higher than normal background metals concentrations at the receiving water-monitoring stations.*

*It should also be noted, based on Resolution 94-009, that the AWTF was constructed to allow TITP to operate with a goal of removing plant tertiary effluent from the harbor by 2020. At the time this resolution was adopted, it was determined that dilution credits were necessary for the operation of the AWTF. The RWQCB staff report in support of constructing the AWTF and allowing TITP to continue to discharge to the harbor in the interim provided four scenarios for dilution credits that would enable the discharge of tertiary effluent and the future discharge of brine to the harbor. If dilution credits are now not going to be allowed, then the Bureau will not be able to comply with these CTR/SIP-based limits for metals. More importantly, by not applying dilution credits for metals, the Regional Board is jeopardizing the operation of not only TITP, but the operation of the AWTF and its groundwater benefits. Therefore, the Bureau requests that dilution credits be applied to the effluent limits pending additional metals monitoring and other supporting evidence demonstrating that the removal of dilution credits is justified.*

**The Bureau requests** that dilution credits be applied to TITP's effluent for metals.

**Response:** We disagree the City's comments.

The Reasonable Potential Analysis was conducted for all priority pollutants. In doing the RPA, Regional Board staff used all available data which had been submitted by the Discharger to the Regional Board Office. Since the ambient metals concentrations were higher than the applicable CTR criteria (discharge has reasonable potential to contribute to an exceedance of the applicable CTR criteria), it was not possible to grant dilution credit for those metals. According to SIP Section 1.4.2.1., dilution credits may be limited or denied on a pollutant by pollutant basis, which may result in a dilution credit for all, some, or no priority pollutants in a discharge. The SIP does not authorize "provisional" dilution credits. If in the future, the City can provide other data, which demonstrates that a dilution credit is warranted, then the permit may be reopened and revised at a later date.

Step 2, Section 1.4.B. of the State Implementation Plan (SIP) clearly indicates that there is no dilution credit allowed with the condition of the ambient background (receiving water) concentration higher than the priority pollutant criteria. As described in the City's comment, *the Port of Los Angeles' Channel Deepening Project and its dredging and construction of the Submerged Storage Site adjacent to the TITP Outfall should be considered as a possible source of the currently high metals background concentrations in the Harbor. This ongoing construction may have caused higher than normal background metals concentrations at the receiving water-monitoring stations.* Therefore, the Regional Board's mission based on the purpose of Step 2, Section 1.4.B. is to prevent further deterioration of receiving water quality. In addition, Section 1.4.2.1 of the SIP also states "Dilution credits may be limited or denied on a pollutant-by-pollutant basis, which may result in a dilution credit for all, some, or no priority pollutants in a discharge." Therefore, we did not grant each pollutant with a dilution credit because there is no assimilative capacity in the receiving water. The City should address a plan to investigate the sources of the high levels of



contaminants in the collection system. If the sources can be identified, source reduction measures (including, when appropriate, Pollution Minimization Plans) can be instituted. At the time that this Order is being considered, the Discharger is unsure whether or not all sources contributing to the high contaminant levels can be identified. Therefore, a parallel effort should be made to evaluate the appropriateness of Site Specific Objectives (SSO) and, where appropriate, Use Attainability Analyses (UAA), and modifications to and/or construction of treatment facilities. If it is determined that a SSO or UAA is necessary and appropriate, the Discharger should submit a written request for a SSO study, accompanied by a preliminary commitment to fund the Study, to the Regional Board. The City will then develop a workplan and submit it to the Regional Board for approval prior to the initiation of the studies.

**Modification:** There is no change warranted in response to the comment.

**5. Comment: *Applications of Drinking Water Standards for MBAS and Radioactivity***

*The beneficial uses of the receiving waters listed in the Tentative Permit do not include a domestic and municipal supply (MUN) use, yet effluent limits are being proposed in the Tentative Permit based on criteria adopted to protect only the MUN use. See Basin Plan pages 3-11 and 3-15 (criteria for Methylene Blue Activated Substances (MBAS) and radioactive substances applicable only to "waters designated for use as domestic and municipal supply (MUN)"). Because Maximum Contaminant Levels (MCLs) only apply to an MUN use, the Bureau requests that the Regional Board remove all MCL limits, including those for MBAS and radioactivity.*

**A. MBAS**

*The Regional Board incorrectly proposed inapplicable drinking water-based limits for MBAS on this discharge. The Bureau requests that all limits based on drinking water MCLs be deleted from the Tentative Permit. The Basin Plan contains a numeric water quality objective for MBAS, limiting concentrations to 0.5 mg/L, which is the secondary drinking water standard. See Basin Plan page 3-11. However, this objective only applies "in waters designated MUN." Since the receiving waters where TITP discharges are not designated MUN, this objective does not apply.*

*The Basin Plan also discusses the discharge of surfactants that might disturb the surface tension, which may affect insects and gills in aquatic life. However, even though the Fact Sheet at page F-36 states that the 0.5 mg/L concentration "has been determined to be protective of beneficial uses and the aesthetic quality [taste] of waters," there is no evidence in the record to support this determination. Furthermore, nothing in the record demonstrates that these effects have been seen or demonstrated in the receiving waters to which TITP discharges or that there is a reasonable potential to adversely affect aquatic life beneficial uses. The record also contains no information that the secondary drinking water MCL was ever intended to, or does, provide aquatic life protection. Nevertheless, the Tentative Permit includes narrative objectives, and monitoring requirements exist to cover the discharge of foaming agents adverse impacts*





*to aquatic life. See Tentative Permit, Provision I.3. No other requirements are necessary or warranted.*

*Finally, even if the 0.5 mg/L were somehow applicable, the reasonable potential analysis (RPA) for MBAS is questionable, as MBAS were never detected in the effluent at levels above 0.5 mg/L. See Tentative Permit, Page 27, footnote [10] and Fact Sheet at Page F-32, footnote [10] ("The concentrations of MBAS in the last permit cycle are between 0.090 mg/L and 0.368 mg/L, which do not exceed the Basin Plan's MBAS WQO (0.5 mg/L).") Therefore, no effluent limit for MBAS is necessary, and the proposed limit should be removed.*

**The Bureau requests** to delete the effluent limitation for MBAS currently proposed in the Tentative Permit.

**Response:** The Regional Board staff agree that MUN is not listed as a beneficial use for the Los Angeles Harbor. Regional Board staff, based on Best Professional Judgement (BPJ), use radionuclide Maximum Contaminate Levels (MCLs) as effluent limits for radioactivity because they are the only scientifically-based regulatory criteria available. We have consistently used radioactivity MCLs as enforceable limits in currently adopted NPDES permits. For MBAS, using BPJ, we have translated the narrative in the Basin Plan that water "shall not contain floating materials, including solid, liquids, **foams**, and scum, in concentrations that cause nuisance or adversely affect beneficial uses" into a numeric limit. Therefore, for the protection of water quality, 0.5 mg/L (the secondary drinking water standard for MBAS) is the only scientifically-based regulatory criteria available. At a concentration of 0.5 mg/L or less, there should not be any adverse impact or nuisance caused in receiving waters. Also, based upon BPJ, it is reasonable to expect that some MBAS from the soaps and detergents present in the City's sewershed could be released at the outfall.

**Modification:** There is no change warranted in response to the comment.

#### *B. Radioactivity*

*The Regional Board incorrectly proposed inapplicable drinking water-based limits for radioactivity on this discharge. The Bureau requests that all limits based on drinking water MCLs be deleted from the Tentative Permit. (The Fact Sheet states that the Title 22 MCL-based effluent limits were included in the permits based on "best professional judgements [sic]." See Fact Sheet at F-39.)*

*Drinking water standards were intended only to apply to drinking water treatment facilities (at the tap or point-of-use) and should not apply "end-of-pipe" to wastewater treatment facilities (per 22 C.C.R. §64431 and 64444). Since neither the TITP effluent nor the receiving water is used for direct potable purposes, the Title 22-based effluent limits, as daily maximum or even monthly average effluent limits in the Tentative Permit are unnecessarily restrictive and inappropriate for treated effluent discharged to the harbor. In most cases, drinking water standards are also intended to be applied as 12-*



*month averages (per Title 22, Division 4, Chapter 15, Article 4, §64432). Thus, there is no reason provided why the limits for radioactivity, if authorized at all (see 40 C.F.R. §122.45(d)(2)), must be set as daily maximum limits.*

*The 1994 Basin Plan incorporated by reference concentrations for radionuclides only for “waters designated for use as domestic or municipal supply (MUN).” See Basin Plan at 3-15. Therefore, these Title 22-based effluent limits to protect this use are not applicable to waters that have no existing or probable future MUN use. See Tentative Permit at Page 10, Finding 28, and Fact Sheet at Page F-15. Therefore, these radioactivity limits are not necessary to protect beneficial uses and should be deleted from the permit for a lack of an applicable water quality objective and a lack of reasonable potential as allowed by 33 U.S.C. §1342(o)(1) and (2).*

*The Basin Plan establishes a narrative water quality objective for radioactivity that states that “radionuclides shall not be present in concentrations that are deleterious to human, plant, animal or aquatic life or that result in the accumulation of radionuclides in the food web to an extent that presents a hazard to human, plant, animal or aquatic life.” (See Basin Plan page 3-15.) The Tentative Permit and Fact Sheet fail to contain evidence that a reasonable potential exists to violate this narrative objective. Nevertheless, presumably in order to protect beneficial uses from radioactivity, the permit includes both a narrative receiving water limitation stating that radioactivity from waste cannot degrade marine life, as well as radioactivity monitoring requirements. See Tentative Permit at Page 36, Provision I.3.E, and Monitoring and Reporting Program at Page T-10. No other permit requirement is necessary or warranted.*

*The Basin Plan also incorporated by reference limits from Title 22, Section 64443 (Radioactivity), Table 4. See Basin Plan at 3-16 (Table 3-9). However, these objectives apply ONLY to waters designated “for use as domestic or municipal supply (MUN).” See Basin Plan pages 3-15 and 3-16 (“for MUN beneficial use”). Since none of the waters listed in the Tentative Permit at pages 12-13 list MUN as a beneficial use, California Title 22 objectives for radioactivity cannot be directly applicable to the receiving waters or to TITP’s discharge. Further, even if these criteria were somehow applicable, the Tentative Permit and Fact Sheet do not contain an RPA justifying the imposition of effluent limits for radioactivity.*

**The Bureau requests** to delete the effluent limits for Radioactivity currently proposed in the Tentative Permit.

**Response:** The Regional Board staff agree that MUN is not listed as a beneficial use for the Los Angeles Harbor. Regional Board staff, based on BPJ, use radionuclide MCLs as daily maximum effluent limits for radioactivity because it is the only scientifically-based regulatory criteria available. This is consistent with other NPDES permits recently issued by the Regional Board.

**Modification:** There is no change warranted in response to the comment.



**6. Comment: Ammonia Limits are Overly Conservative and Consistent Compliance is Not Feasibly Achievable**

*Instead of imposing numeric effluent limitations for ammonia without dilution because receiving water background data are unavailable, the permit should require additional receiving water monitoring while provisionally allowing dilution credits. Preliminary findings [ambient ammonia testing by the Bureau in the last 4 weeks] suggest that the ammonia levels in the receiving water will not exceed the water quality objectives. Once additional data are collected, the Regional Board can perform a reasonable potential analysis at that time to determine if dilution credits are applicable and reopen the permit to include any revised limits. The Tentative Permit already includes such re-openers. See Tentative Permit at page 43, Provision V.1 and V.3.*

*The Tentative Permit also states that the revised ammonia criteria apply at the end of pipe. This means that the scientifically established dilution ratio discussed above will not be used. The Regional Board should provide dilution for ammonia as well as for other constituents.*

*Notwithstanding the above comments, the Regional Board used a very conservative calculation for determining the ammonia water quality objective. Taking the minimum value from 20 stations over a two-year period is overly protective and not representative. The Bureau requests that an alternative approach be used to calculate a statistically based protective effluent limit based on the overall spatial average condition in the harbor for each event. The Bureau proposes that the 95<sup>th</sup> and 99<sup>th</sup> percentiles, consistent with effluent limit calculation procedures prescribed by the TSD, be used to calculate monthly average and daily maximum limits, respectively. The percentiles should be calculated from depth and event-averaged total ammonia objective values.*

**The Bureau requests** that additional receiving water ammonia monitoring and, in the interim, provide a provisional dilution credit when calculating ammonia limits. The Tentative Permit contains a reopener to allow the Regional Board to address any necessary changes to the limit or the dilution credit after a year of receiving water data are collected. **The Bureau also requests** that the 95<sup>th</sup> and 99<sup>th</sup> percentiles of the lognormal distribution be used to calculate the total ammonia objectives and, therefore, effluent limits. The requested seasonal limits are provided in Attachment 2 to this letter.

**Response:** We disagree. Regional Board staff used the City's Bight monitoring data collected from 20 stations over a two-year period and the Resolution No. 200-022, Amended Ammonia Water Quality Objectives based on USEPA's "Ambient Water Quality Criteria for Ammonia (Saltwater)-1989", which are the bases to calculate the projected ammonia concentration in the receiving water of the Harbor. The projected ammonia concentrations resulting from the City's 2-year period data calculation show great variations through the different months. Therefore, we believe that: 1) the results of *ambient ammonia testing by the Bureau in the last 4 weeks* (showing no exceedances of the ammonia water criteria) are seasonal-specific and do not project concentrations for other seasons (however, we appreciate the City's efforts); and 2) the City's monthly monitoring for one year is essential to gather information on seasonality for whether a dilution credit should be



granted for the final ammonia limits. If the City adequately demonstrates that the ammonia concentrations in the receiving water are less than the saltwater ammonia criteria throughout the year, then the dilution credit would be appropriate, and the permit will be reopened.

The reopeners in the revised tentative permit will allow this.

We disagree for use of the 95<sup>th</sup> or 99<sup>th</sup> percentiles of the lognormal distribution to determine the ammonia water criteria objectives. For the protection of aquatic life, human health, and the receiving water quality, the most stringent ammonia water quality objective has to be applied. This approach is the same as the SIP's RPA for toxic pollutants.

**Modification:** There is no change warranted in response to the comment.

#### **7. Comment: *Changes Needed to the Toxicity Requirements in Tentative Permit***

*The Bureau requests that the use of toxicity units be replaced with point estimates for both calculating reasonable potential and for determining compliance. The December 10, 2004 United States Court of Appeals for the D.C. Circuit decision stated that the use of toxicity units may be inappropriate for measuring variability due to an artificial inflation of the coefficient of variation. See Decision, Attachment 3 at footnote 4. Point estimates have also been recommended in promulgated WET Test Methods and the US EPA WET method guidance documents.*

*If point estimates are not instituted, the Bureau requests that the TITP acute toxicity requirements be more consistent with Hyperion's Tentative Permit. The Tentative Permit for Hyperion (at pg. T-29, Section 1.c.) states that "The acute toxicity of the effluent [for discharge 001] shall be expressed and reported as 'Pass or Fail'" based on hypothesis testing. The problem with expressing acute toxicity as percent survival as is required in TITP's permit is that this requirement does not allow for consideration of whether or not a statistical difference exists from the controls.*

*The Tentative Permit also requires ambient acute toxicity testing in addition to effluent testing. This is redundant and can lead to false positives, which can occur due to WET testing's inherent variability. The Tentative Permit also notes that TITP has not had any problems meeting the previously required acute toxicity objective and, therefore, no reasonable potential exists for TITP's effluent to cause acute toxicity in the receiving water. As such, there should not be a requirement in the permit to monitor the receiving water for acute toxicity.*

*The Tentative Permit allows for dilution of toxicity tests when red abalone is the test organism. The Bureau requests that this provision also be allowed for the use of giant kelp, since it has been shown that giant kelp also cannot be tested at 100% effluent. Past studies using sea salts for red abalone and giant kelp have introduced toxicity into the dilution water.*



*The Tentative Permit requires TITP to begin increased testing within three days of receipt of the exceeded test result. This leaves very little time to order new samples and test organisms and commence testing. An increase to five business days would be more appropriate to begin accelerated testing. The Draft Order allows only six weeks to complete six accelerated monitoring tests while the Draft Order for Hyperion allows twelve weeks. A 6-week period to complete six tests will be quite difficult to achieve and will allow no analysis of test results prior to initiation of the next test. The Bureau requests that the TITP Draft Order be consistent with the Hyperion Draft Order and allow for a 12-week accelerated monitoring completion period.*

**The Bureau requests the following:**

1. *Use point estimates for determining reasonable potential and compliance; or at least use hypothesis testing to ensure that acute toxicity results are compared to the control test and allow results to be reported as "pass" or "fail", not percent survival;*
2. *Remove the requirement to monitor the receiving water for acute toxicity;*
3. *Allow the use of giant kelp at 60% effluent for the chronic toxicity tests;*
4. *Allow an additional two days (five days total) to prepare for accelerated testing; and*
5. *Allow an additional 6 weeks (12 weeks total) to complete accelerated monitoring.*

**Response:** Regional Board staff use the standard protocol of the percent survival for the acute toxicity tests for the TITP, based on the Basin Plan's WQOs. Therefore, Regional Board staff disagree to use "pass or fail" instead of "percent survival" in the reporting of acute toxicity tests. Additionally, the City must monitor the acute toxicity in the receiving water. There are two reasons:

1. The dilution credit of 61 is granted for the TITP's effluent. Currently, there is no water quality information for the TITP's effluent using the dilution credit. Toxicity tests will be used as the first line of monitoring in order to detect the possible adverse impacts on the aquatic life.
2. The results of acute toxicity tests in the receiving water will be used to evaluate whether the TITP may be granted a dilution credit for acute toxicity.

Regional Board staff agree to revise the City's request on Items 3 to 6., which have been modified and reflected in the accompanying reissued Permit, MRP, and Fact Sheet.

**Modification:** Some changes have been made.

#### **8. Comment: *Revise Monitoring and Reporting Requirements in Permit***

*As a generally applicable comment, the Regional Board must justify the need and burden (including cost) for each monitoring and reporting requirement in accordance with Water Code §13267(b) and §13225(c). Monitoring requirements should be based on potential impacts of TITP's discharge to the harbor. Requirements included in the permit for regional,*





*inshore and shoreline microbiological monitoring should be removed from TITP's permit since its effluent is not the cause of any impairments.*

**A. Bacteria**

*For example, the Tentative Permit leaves the impression that TITP effluent is linked to bacteria on a distant beach, but this implication is invalidated by the remainder of the paragraph. The entire paragraph appears to have been borrowed from another permit, is unnecessary, and should be deleted from the final Order (See Tentative Permit, page 7, item 20). Alternatively, the first sentence could be revised to read: "Historically high bacteria counts at Cabrillo Beach have been found not to be caused by TITP effluent."*

*A model used in 1993 to simulate effluent mixing in the harbor predicted dilution ratios in the range of 424:1 at the Cabrillo Shallow Water Habitat for the Stage I Pier 400 configuration whose construction was completed in 1998. Monthly ambient monitoring by the Bureau confirms these simulations in finding that surface salinity anomaly values at stations near the habitat were at background levels, with high (over 250:1) dilution already reached in half the distance from the TITP diffuser to Cabrillo Beach. The high level of shipping activity and urban run-off in this area provides other potential sources for bacteria besides TITP.*

**The Bureau requests** to remove bacteria monitoring requirements for Cabrillo Beach.

**Response:** We agree to revise the statement of Finding No. 20 as "High bacteria appear at Cabrillo Beach, ~~which may be exposed to~~ are not caused by the TITP."

**Modification:** Changes have been made.

**B. Inshore Monitoring**

*Shoreline monitoring should be removed in recognition that the TITP effluent plume does not reach the shoreline at stations S1 and S2 in Cabrillo Beach. This monitoring has been included in the Los Angeles Harbor TMDL. As such, shoreline monitoring at this beach should not be included in the TITP NPDES permit as it belongs in the County's MS4 stormwater permit. The Bureau requests this monitoring requirement be removed from the TITP Tentative Permit, as it has been removed from the HTP permit.*

**The Bureau requests** to remove the shoreline monitoring requirements as shoreline sites are not affected by TITP's effluent and belong in the MS4 permit.

**Response:** Regional Board staff disagree to remove the shoreline monitoring program until it has been added to the MS4 permit, because in the current MS4 permit does not cover S1 and S2 monitoring stations.

**Modification:** No change is warranted.



*C. Consideration of In-Water Obstructions*

*The configuration of Pier 400, the Shallow Water Habitat, and other submerged structures within the harbor are constantly changing and can either interfere with sampling operations or prevent access to stations. The Bureau requests that the Regional Board provide language addressing the potential loss of sampling stations by adding the following: "In the event that a sampling station is temporarily or permanently obstructed due to construction activities for creating new habitat, storage sites, or piers, the station may be abandoned upon notification to the Regional Board once final determination is made regarding the status of such station." There are also multiple stations permanently obstructed by the Pier 400 Submerged Sediment Storage Site (shown in Figures M1 through M5). The Bureau requests that the Regional Board remove these stations from the station list as outlined in the attached comment matrix.*

**The Bureau requests** to remove monitoring stations obstructed by the Pier 400 Submerged Storage Site or other obstructions.

**Response:** We agree.

**Modification:** Changes have been made.

*D. Regional Seafood Safety Survey*

*The Bureau requests that the Regional Board remove the Regional Seafood Safety Survey program as described. This program does not exist as a formal entity nor is regional seafood safety a part of normal regional monitoring such as Bight'98 and Bight'03. As such, participation in a non-existent program should not be legally mandated. If such a program is formalized, then the City of Los Angeles may consider participating in relevant portions of this program on a voluntary basis to demonstrate its commitment to the environment. This requirement has not been demonstrated to be necessary for inclusion in the TITP NPDES permit.*

**The Bureau requests** to remove the requirement for mandatory participation in the Regional Seafood Safety Program and state instead that participation in regional monitoring programs related to seafood be voluntary.

**Response:** The State of California created a Coastal Fish Contamination Program (CFCP) in 1998. The objective of this Program was to obtain data to be used by OEHHA for human health assessments of fish species for coastal waters in areas commonly utilized by sport fishermen. After a few years, dedicated funding for this statewide monitoring program disappeared. The CFCP, as well as the State Mussel Watch and Toxic Substances Monitoring Programs, are included within the State's Surface Water Ambient Monitoring Program (SWAMP) and must compete for limited funding resources.

Currently, SWAMP is underfunded and insufficient funding is available to conduct the CFCP on a statewide basis. If such a statewide program is reinstituted in the future, the City of

Los Angeles will be required to participate. However, it is likely that participation in the Local Seafood Safety Survey would be adequate to cover most, if not all, of this obligation. Even if the statewide regional survey fails to materialize, the Local Seafood Safety Survey recommendations from the Santa Monica Bay Restoration Project included a broad scale resampling of several species at least once every 10 years; consequently, this element is included as a Regional Seafood Safety Survey monitoring requirement.

The Regional Board anticipate that some type of Regional Predator Risk survey will be retained in future Bight Regional Surveys, given that this element was monitored during Bight'98 and Bight'03. Should this type of survey be discontinued, the City may consult with the Regional Board to reallocate these resources.

**Modification:** No change is warranted.

### 3. *Provision of an RPA in Annual Reports*

*The Tentative Permit requires the submittal of a reasonable potential analysis (RPA) for all constituents as part of the Annual Monitoring Report. The Bureau believes that the submittal of the Bureau's RPA with the Annual Monitoring Report is not appropriate. An RPA is to be calculated independently by the Regional Board, using the data provided in the report. See accord 40 C.F.R. §122.44(d)(1)(ii) ("the permitting authority" is required to determine the existence of reasonable potential).*

**The Bureau requests** to delete the requirement for submittal of an RPA by the City with each Annual Monitoring Report.

**Response:** This is standard language in all recently adopted POTW NPDES permits. In addition, the City will use the RPA results to evaluate the TITP's wastewater treatment performance. If the results show reasonable potential to exceed the WQOs, then the City will be able to investigate the causes and prevent the deterioration of the receiving water quality.

**Modification:** No change is warranted.

## 9. **Comment: Mass Limits**

### A. *Duplicative Mass Based Limits*

*The Tentative Permit and Fact Sheet correctly state, "40 C.F.R. §122.45(f)(1) requires that, except under certain circumstances, all permit limits, standards, or prohibitions be expressed in terms of mass units." However, the Tentative Permit and Fact Sheet ignore that one of the enumerated circumstances is "when the applicable standards and limitations are expressed in terms of other units of measurement" (e.g., concentration). See 40 C.F.R. §122.45(f)(1)(ii).*

*Notwithstanding the fact that the standards and limits for all of the constituents are expressed in regulations as concentration, the Tentative Permit includes more than just concentration limits. The Tentative Permit justifies the mass limits in addition to the concentration limits based on the alleged finding that "mass-based limits ensure that proper treatment, and not dilution, is employed to comply with the final effluent concentration limitations."<sup>2</sup> However, the Fact Sheet does not contain any evidence that the Bureau is not using proper treatment or that the Bureau is diluting or has the ability or the millions of gallons of water available to dilute its effluent. Furthermore, there exists no independent justification for these mass limits as they are just alternative mathematical expressions of the concentration value.<sup>3</sup> No evidence has been provided to demonstrate that mass limits are required or necessary for any water quality purpose.*

**The Bureau requests** to remove all proposed mass limits because no evidence exists to demonstrate an independent justification or water quality purpose.

**Response:** The inclusion of concentration limits does not preclude the inclusion of mass limits. 40 CFR section 122.45(f)(1)(ii) does not act as a bar to imposing both limits, but expresses a preference for mass limits. Further, 40 CFR section 122.45(f)(2) explicitly states that "pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations." (See also the USEPA's TSD at pp. 110-111.) As detailed in the Fact Sheet and accompanying Order, the tentative permit includes mass and concentration limits for some constituents in order to protect the designated beneficial uses. Furthermore, State Board Order Nos. WQO 2003-0009 and WQO 2003-0012, upheld the concurrent use of mass-based and concentration-based effluent limits in the CSDLAC Whittier Narrows, Los Coyotes, and Long Beach WRP permits.

**Modification:** There is no change warranted in response to the comment.

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<sup>2</sup> In regard to the Regional Board's concern that mass limits are required to prohibit dilution as a method for permit compliance in order to ensure proper operation of the plant, a similar provision already exists in the federal regulations, incorporated by reference into Standard Provisions as follows: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit." See 40 C.F.R. §122.41; see also Permit at Provision V.A. If the Regional Board feels that the above-cited provision is not sufficient, then the Regional Board should instead include in the NPDES permit a specific prohibition on adding water to dilute effluent in order to meet concentration limits, instead of including a mass limit.

<sup>3</sup> A mass limit is merely a calculation of the flow multiplied by each concentration limit (and by a standardizing translation factor to pounds per day of 8.34). For example, the monthly average concentration limit for BOD is 15. If one multiplies this number by 30 mgd, and the result from that calculation by 8.34, the prescribed mass limit of 3800 lbs./day is derived. Thus, the proposed mass limits are simply a function of calculation, and have no independent necessity or justification. Since concentration limits already exist and actual flow is limited, the permit already contains an inherent mass cap. Therefore, mass limits are simply duplicative, and represent an abuse of discretion where not demonstrated to be necessary.

*B. Wet Weather Flow Exception*

*The Bureau appreciates the use of design flow in the calculation of mass limits. However, unlike other permits recently issued by the Regional Board (e.g., Order Nos. R4-2002-0142 and proposed Hyperion Treatment Plant permit) that did not impose mass limits during wet weather, the Tentative Permit imposes mass limits during both dry and wet weather*

**The Bureau requests** that if mass limits are not removed, then at the very least, the Regional Board should make the mass limits applicable in dry weather only.

**Response:** We agree to add the following statement “During wet-weather storm events in which the flow exceeds the design capacity, the mass discharge rate limitations shall not apply, and concentration limitations will provide the only applicable effluent limitations.” at Section I.2.B.a.Footnote [4]. and Section I.2.B.6.Footnote [6]. of the permit and Section XI.6.A.a.Footnote [4] and Section XI.6.D.Footnote [6] of the Fact Sheet.

**Modification:** Changes have made.

**10. Comment: *Compliance Determinations***

- A. *Disparate treatment of data that are less than Method Detection Limit (MDL), Non Detect, (ND), or less than Minimum Level (ML), Detected Not Quantified, (DNQ)*

*Section IV. 6 of Tentative Permit requires the use of ½ MDL if the result is ND and the estimated concentration if the result is DNQ for calculation of mass emission rates for monthly average concentrations. It should be noted that ½ MDL and DNQ are merely estimated values and not actual results. Therefore, they should not be used to determine any actual effluent value or for permit compliance. Additionally, this is not consistent with the calculation of monthly average concentration stated in Section IV.5.B.b., requiring the use of the median when the data set contains combination of numeric values, DNQ and ND.*

*As an example, the October 2004 TITP effluent data contained 5 copper results (three were ND and two were DNQ). If the requirements of this Tentative Permit were applied, the monthly average calculation would be based on the median value of these results, and the monthly average would be ND (not detected). But, for the mass emission calculation, the monthly average concentration would be artificially deemed to be 5 µg/L, resulting in a mass emission rate of 1.25 lb/day. By doing so, the monthly average/median concentration would be reported as ND, while the mass emission rate would be 1.25 lb/day, which makes no sense. To maintain consistency, and to produce comparable results, the mass emission calculation should use the monthly average/median calculation as specified under Section IV. 5, Compliance Determination (i.e., the mass-based monthly average value must be equal to concentration-based Monthly Average value multiplied by the plant's average flow).*





**The Bureau requests** to reword Section IV.6 of the Draft Order as follows: *"In calculating mass emission rates from the monthly average concentrations, use the monthly average (or median) determined in Section II.E.3 IV.5.B.b above. To be consistent with section IV.5.C, if all pollutants belonging to the same group are reported as ND or DNQ, the sum of the individual pollutant concentrations should be considered to be zero ~~for the calculation of the monthly average concentration.~~"*

**Response:** We acknowledge that no actual effluent values may be determined by ND or DNQ. Currently, there is no specific instructions regarding how to substitute ND data with a numeric data. The substitution of ND with one-half of MDL has been consistently used in the development of the permit, such as with the RPA. Since the actual values are not obtainable, we believe our approach will generate reasonable estimate values for ND and DNQ. We will continue to perform the RPA in this manner. However, for the calculation of mass values, a zero value for ND and DNQ can be applied for compliance purposes. Section IV.6. in the permit has been revised as follows: *"In calculating mass emission rates from the monthly average concentrations, for compliance purpose, use one half of the method detection limit for constituents reported as "Not Detected"(ND) and the estimated concentration for or "Detected, but Not Quantified" (DNQ) to have concentrations equal to zero for the calculation of the monthly average concentration. ~~To be consistent with section II.E.3., if all pollutants belonging to the same group are reported as ND or DNQ, the sum of the individual pollutant concentrations should be considered as zero for the calculation of the monthly average concentration.~~"*

**Modification:** The modifications have been made.

*B. Compliance determinations when samples contain ND or DNQ.*

*The following statement in Section IV.5 of the Tentative Permit needs further clarification: "When one or more sample results are reported as "Not-Detected (ND)" or "Detected, but Not Quantified (DNQ)" (see Reporting Requirements IV. D. of M&RP), the median value of these four samples will be used for compliance determination. If one or both of the middle values is ND or DNQ, the median will be the lower of the two middle values."*

*The Regional Board should clarify whether this applies to the situation where one of the two middle values is a numeric value and the other is either ND or DNQ. For instance, what if the two middle values are 0.43 and ND. Should the ND be selected as the median?*

*Also, this section should clarify whether it only refers to the situation of multiple samples being taken in a month when the first sample was out of compliance with the monthly average limitation, or does it also apply when there are only two samples (a monthly sample and a split sample) in one month? Also, does this apply to averaging of monthly results on the annual report?*

**The Bureau requests** to clarify how compliance with effluents limits will be determined when sample results contain ND or DNQ data, and include generalized language applicable to any type of averaging.

**Response:** The City can use Section IV.5.D. to determine the compliance. If the median is ND, then the ND should be reported in the City's reports.

**Modification:** No change is warranted.

## **11. Comment: Pretreatment Programs**

### **A. Annual Reporting Requirements.**

*The Tentative Permit requires submittal of a summary in the Annual Report relative to public participation in the City's pretreatment program. The Bureau requests that the summary of public participation be included in the Semi-Annual Report, which is a copy of the newspaper notice required under 40 C.F.R. §403.8(f)(2)(vii). In accordance with 40 C.F.R. Part 403 Pretreatment Regulations, Section 403.12(e)(1) requires that any industrial user submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in effluent.*

*The Bureau's pretreatment program requirement for report submittal is more frequent than the federal requirement. Industrial users are to submit reports on a monthly, bimonthly, quarterly, semiannual, and annual basis. Because industrial users are required to monitor for pollutants during the month of December, reports are due in January of the following year. The Bureau has established a report submittal due date of 15 days immediately following the end of the industrial user monitoring period. If the monitoring period ends in December, the Bureau requires the industrial user to submit the report no later than the 15th day of the following month or by January 15th.*

*In accordance with 40 C.F.R. 403 Pretreatment Regulations, Section 403.8(f)(2)(vii)(F) states that an industrial user is in Significant Non-Compliance (SNC) if it fails to provide, within 30 days after the due date, required reports. The industrial user has until February 15th to submit the required report after the January 15th report due date, if monitoring occurred in December. If the industrial user has not submitted its required report by February 15th, then the Bureau will include the industrial user's name on the published SNC list.*

*Additionally, the Bureau must ensure that all industrial user measurements obtained are in compliance with appropriate sampling techniques and procedures established in 40 C.F.R. Part 136. Verification of industrial user sampling results can range from 15 to 45 days (April 1st) after the SNC reporting period due date (February 15th). After industrial user sampling results have been verified, the SNC list is finalized. It will take approximately 30 days (April 30th) to prepare board reports, brief commissioners, and*



*obtain Board of Public Works approval to publish the SNC list. After the Board of Public Works approves the SNC list, an additional 15 days (May 15th) is necessary to publish the SNC list in the newspaper with the largest local distribution.*

*It is the Bureau's opinion that the published SNC list does not have to be included in the pretreatment annual report based on the above interpretation of EPA regulations, memoranda, and guidance documents. Furthermore, no definite deadline date exists for publishing the SNC list. The Bureau believes that the SNC list publication schedule should allow for data verification and for the built-in flexibility necessary to publish a complete and accurate SNC list. Therefore, this requirement should be revised as shown in the Attachment 4.*

*The Bureau is also required to submit a Semi-Annual Pretreatment Program Compliance Report by August 15th of each year covering the periods of January 1st to June 30th. The Bureau requests that the due date of this report be changed to September 1st of each year to be consistent with the two months given for the preparation of the Annual Report.*

**The Bureau requests** that a copy of the newspaper notice per 40 C.F.R. §403.8(f)(2)(vii) be included in the Semi-Annual Report required under this NPDES Permit. Additionally, **the Bureau requests** that the due date for the January 1 to June 30 Semi-Annual Pretreatment Compliance Report be changed from August 15<sup>th</sup> to September 1<sup>st</sup> of each year.

**Response:** As for the newspaper notice language, we disagree that a revision is warranted. This is standard language in all recently adopted POTW NPDES permits. Regional Board staff will not revise the standard language of the Standard Pretreatment Reporting Requirements. As for the due date for the January 1 to June 30 Semi-Annual Pretreatment Compliance Report, we will not revise the language of the Standard Pretreatment Reporting Requirements. However, the report date has been changed from August to September 1 of each year in Section III.6. of the accompanying permit. Staff have also included language regarding conflicts between the permit and MRP, and the Standard Pretreatment Reporting Requirements.

**Modification:** No other change is warranted.

## **12. Comment: Sanitary Sewer Overflows Requirements in Permit**

*The Bureau has worked proactively with regulators, industry, and the local communities in reducing the number of SSOs and curbing their impact. Over the last three years, we have achieved more than 40% reduction in SSOs.*

*The U.S. EPA and the SWRCB are both currently working on proposed SSO language for NPDES or WDR permits for collection systems. The Bureau proposes language found in Attachment 5, which is similar to that in the U.S. EPA proposed Capacity Management Operation and Maintenance (CMOM) regulations and that in the Santa Ana Regional Board's SSO WDRs, to be included in the TITP permit. The permit should recognize that*



*some SSOs are unavoidable and clarify that unavoidable SSOs are not violations of the permit and that no enforcement actions will be initiated when an SSO occurs that is unavoidable or caused no increase in risk to the beneficial uses.*

*The Bureau requests that the Regional Board make the permit clearly state that spills are not subject to mandatory minimum penalties. The State Board's 2001 SB 709 Q&A document states: "If a spill or overflow does not occur from the authorized discharge location(s) specified in the NPDES permit, it is not subject to mandatory minimum penalties because it is not subject to the permit's effluent limitations." Mandatory minimum penalties do not apply to SSOs from collection systems, but only to violations of effluent limits.*

*In addition, small spills (less than the standard reportable quantity of 1000 gallons) should be expressly exempted from the definition of SSO if cleaned up prior to reaching waters of the United States. For example, a 5-gallon spill that reaches and enters a catch basin connected to a storm water collection system may never leave the catch basin as the volume is too small to overflow the weir leading to the collection system piping. Furthermore, this size spill is unlikely to be a significant enough volume to adversely impact the quality of receiving waters. Also, if a spill is fully contained and properly treated and sanitized, such as might occur in a street, gutter, or catch basin, this should not be considered a violation of the permit.*

*The City currently reports all spills within its jurisdiction to the County Health Department by the next business day. The reporting requirements should continue to be based on volume. The 24-hour reporting should only apply to spills that exceed 500 gallons and reach receiving waters, or more than 1,000 gallons if contained and doesn't reach receiving waters (referred to as category II spills). It is not appropriate or in the public interest to require 24-hour notification for spills that do not create a public health threat. Furthermore, 24-hour notification is impractical if the spill occurs on the weekend and is handled and cleaned up by operations staff.*

**The Bureau requests** to include the changes requested above in the permit and revise the time frames for notification to make them consistent with the Settlement Agreement as noted follows.

- *Following notification, the proposed permit requires submittal of a written report five working days after verbal notification. The five-day written reporting requirement is unnecessary, overburdensome, and impractical if it is to be applied to all spills. The 5-day report can be done and is being done for all category II spills. The Bureau submits monthly NPDES reports, which include all spill information as previously reported to the RWQCB. In addition, and as part of the Settlement Agreement and Final Order which was entered by the Court in October 2004 in the consolidated case of Santa Monica Baykeeper, United States, State of California et. al. v. City of Los Angeles (Case Nos. 98-9039-RSWL and 01-191-RSWL) (referred to thereafter as Settlement Agreement), the City is required to submit a quarterly report for all spills. These reports are sufficient, and thereby make the five-day reporting requirement unnecessary. Furthermore, for some constituents and under some circumstances, the Bureau utilizes outside*



*laboratories. A five-day turn around time for completion of the required analysis is impractical in these situations.*

**Response:** Regional Board staff agree to revise the statement as follows: "Regional Board notification shall be followed by a written preliminary report five working days after verbal/electronic notification. Within 10 days after submitting preliminary report, the Discharger shall submit the final written report to this Regional Board. The written report shall..."

**Modification:** Changes have been made.

- *Regarding sampling of overflows and downstream of overflows, page T-5 item 7B and 7.C., sampling of sewage spills at point of overflow is unnecessary and takes away from the resources necessary to contain, address and cleanup the sewer spill. The City is willing to concede to the fact the water leaving the sewer system has sewage characteristics and strength. Sampling sewage overflows at point of entry into receiving water is very difficult and risky especially along the Los Angeles River during severe rains. Therefore, the City requests that sampling be limited to the permanent monitoring locations.*

**Response:** Depending upon where the SSO occurs, the overflow could exhibit different toxicity and threats to surface water quality, as well as groundwater. Therefore, the City is required to analyze for site-specific constituents of concern that may be present in the sewage. For example, sewage directly downstream of a plating shop will have different characteristics than sewage from sanitary sources. Once the USEPA and State Board finalize the SSO language, the NPDES permit will be reopened, and that language will be incorporated.

**Modification:**

- *In reference to the reports due on the collection system needs and management, those reports are already being submitted as part of the Settlement Agreement. The Bureau recommends that any requirement for collection system reports be consistent with the Settlement Agreement's requirements since the City is already legally obligated to comply with the requirements and reports associated with the Settlement Agreement.*

**Response:** Regional Board staff disagree. This is standard language in all recently adopted NPDES permits.

**Modification:** No change is warranted.

- *TITP's M&RP includes reporting requirements in the NPDES Annual Report for spill documentation and response that were not in the previous permit. Currently, the Bureau documents and reports this information to the Regional Board per the Settlement Agreement. This reporting requirement would be redundant and should not be part of the Annual Report and should be removed from the permit as a requirement.*



**Response:** Regional Board staff disagree. This is standard language in all recently adopted NPDES permits.

**Modification:** No change is warranted.

### **13. Comment: *Effluent Monitoring Requirements***

*The MR&P at Section VI1 states that an effluent sampling station shall be established for each point of discharge. This Section also states that effluent samples may be obtained at a single station provided that such station is representative of the effluent quality at all discharge points. As indicated in Figure P2, the brine discharge from AWTF is downstream of the existing effluent sampling station, which currently only captures the tertiary treated effluent.*

*Pursuant to a recent discussion with Regional Board staff, staff indicated that a single sampling station would need to be established to capture both brine and tertiary treated effluent. However, the establishment of this sampling point could involve either relocating existing lines, constructing new lines, or relocating the existing sampling station. The establishment of this new sampling point will require additional time for the planning, design, and construction of these facilities. Therefore, the Bureau requests that the Regional Board specify a period of 12 months for the planning, design and construction of this new sampling configuration and station.*

**The Bureau requests** that the TITP permit should allow the Bureau 12 months to plan, design, and construct a revised effluent sampling system that monitors both brine and tertiary effluent.

**Response:** We agree with the Bureau's request.

**Modification:** The new paragraph has been added in Section VI.2. of Monitoring & Reporting Program as follows: "There is no such single station representative of the effluent quality at all discharge points. The brine discharge from AWTF is downstream of the existing effluent sampling station, which currently only captures the tertiary treated effluent. Therefore, within 90 days from this Order being adopted, the City needs to submit a plan to the Regional Board for constructing a new sampling station, in order to obtain an approval from the Executive Officer."

### **14. Comment: *Clarify Discharge Prohibition in Permit***

*The Tentative Permit and Fact Sheet refer in several places to a requirement that TITP's discharge is to be eliminated from the harbor at the "earliest practicable date." The Tentative Permit and Fact Sheet should clarify that the discharge from the AWTF will continue even if tertiary effluent discharge is eliminated from the harbor. The AWTF was constructed per Resolution 94-009, which provides the City with the goal of reclaiming all of TITP's wastewater. However, even if the City is able to reclaim 100 percent of TITP's*



*wastewater, brine from the AWTF will continue to be discharged to the harbor and was not prohibited by the Regional Board's resolution.*

*As was noted in the introduction to this comment letter, the quality of TITP's effluent has improved dramatically over the years. When the City originally went to the State Board to demonstrate that its effluent enhanced the waters of the harbor, it was a secondary treatment plant. Today, TITP is a tertiary treatment plant with nitrification, a treatment level equivalent to or higher than any inland POTW discharging to rivers or POTW discharging into enclosed bays and estuaries. However, the City acknowledges that the State does have a policy to eliminate discharges to enclosed bays and estuaries. But at the same time, TITP discharges to a deepwater harbor, that is enclosed by a man-made barrier. As a multiple use harbor, with all of its various day-to-day activities and uses, the effluent level currently discharged by TITP provides a net environmental benefit to the receiving waters of the harbor. Although the City will attempt to meet the goal of recycling 100 percent of TITP's effluent by 2020, in the interim, its tertiary discharge with nitrification should be excluded from the discharge prohibition as most POTWs discharging to San Francisco Bay and other bays within the State have been.*

**The Bureau requests** *to amend the Fact Sheet and the Tentative Permit to clarify that, although the goal is to phase out the discharge of tertiary effluent to the harbor, TITP effluent currently provides a net benefit to the harbor, and that brine from the AWTF will continue to be discharged to the harbor even after 2020..*

**Response:** We agree with the Bureau's request to clarify the discharge prohibitions in the Permit and Fact Sheet. However, the City currently does not use the Best Available Technology (BAT) to treat ammonia in the TITP wastewater treatment processes. The TITP and all inland POTWs have tertiary wastewater treatment processes. However, all Los Angeles County Sanitation Districts of Los Angeles POTWs have, or will have, additional nitrification and denitrification processes, which provide better ammonia treatment capability. Therefore, we disagree that the TITP's treatment level is equivalent to, or higher than, **any** inland POTWs.

**Modification:** We have made some changes to clarify the discharge prohibitions in the Permit and Fact Sheet. Please see the last paragraph in Finding No. 6.B.c. and Section III.3.B.c. of Permit and Fact Sheet, respectively, as follows: "The brine waste stream generated from the AWTF is allowed to be discharged into the Harbor. ...". In addition, Finding No. 11. and Section III.8. of Permit and Fact Sheet, respectively, have been modified as follows: "...the City to comply with Regional Board Resolution No. 94-009 to ultimately phase out discharge of the tertiary-treated wastewater into the Harbor".

Please note that additional responses to your itemized comments have been addressed in the Attachment 1. In addition, our responses to comments from County Sanitation Districts of Los Angeles County are also enclosed as Attachments A. We believe that this letter has addressed your comments and suggestions.



Ms. Rita L. Robinson  
City of Los Angeles, Bureau of Sanitation

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March 28, 2005

Your revised Permit, Monitoring and Reporting Program, Fact Sheet, and attachments will be submitted under a separate cover letter. If you have any further questions, please contact Don Tsai at (213) 576-6665, or the undersigned at (213) 576-6720.

Sincerely,

Blythe Ponek- Bacharowski  
Acting Chief, Watershed Regulatory Section

cc: County Sanitation Districts of Los Angeles County  
Heal The Bay  
Santa Monica BayKeeper

***California Environmental Protection Agency***



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